



**UNITED STATES DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office**

Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10608907	6/27/03	STORER ET AL.	11874-055-999

JONES DAY  
222 EAST 41ST ST  
NEW YORK, NY 10017

**EXAMINER**

TRAVISS C. MCINTOSH III

ART UNIT	PAPER
1623	20090826

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

In response to the Petition filed under 37 CFR 1.182 on 7/2/2009 in which applicants requested the withdrawal of the recorded Terminal Disclaimer over 11/005,445:

On 1/28/2008 the Office sent an Office Action in which the only rejection was a provisional ODP rejection over co-pending application 11/005,445. The 11/005,445 application has a filing date later than that of the instant 10/608,907 application. Per MPEP: "The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in at least one of the applications". Since the only rejection pending on 1/28/2008 was the provisional double patenting rejection, it is believed that the Terminal Disclaimer filed 7/24/2008, and indicated as approved in the Office Action on 11/26/2008, is not required. As such, as of applicant's amendment filed 1/20/2009, the claims were in condition for allowance in the instant application, and the allowance was mailed on 4/7/2009. The 11/005,445 application had an RCE filed in it on 7/2/2009, and also has a terminal disclaimer filed therein over the instant '907 application.

As such, based on the fact that the only rejection in the 1/28/08 Office Action was a provisional double patenting rejection over the later filed 11/005,445 application, the examiner believes the recorded terminal disclaimer is no longer applicable to the one or more claims of the 11/005,445 application and should be vacated.

August 26, 2009

/Traviss C McIntosh III/  
Primary Examiner, Art Unit 1623

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10608907	6/27/03	STORER ET AL.	11874-055-999

JONES DAY  
222 EAST 41ST ST  
NEW YORK, NY 10017

**EXAMINER**

TRAVISS C. MCINTOSH III

ART UNIT	PAPER
1623	20090826

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

In response to the Petition filed under 37 CFR 1.182 on 7/2/2009 in which applicants requested the withdrawal of the recorded Terminal Disclaimer over 11/005,445:

On 1/28/2008 the Office sent an Office Action in which the only rejection was a provisional ODP rejection over co-pending application 11/005,445. The 11/005,445 application has a filing date later than that of the instant 10/608,907 application. Per MPEP: "The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in at least one of the applications". Since the only rejection pending on 1/28/2008 was the provisional double patenting rejection, it is believed that the Terminal Disclaimer filed 7/24/2008, and indicated as approved in the Office Action on 11/26/2008, is not required. As such, as of applicant's amendment filed 1/20/2009, the claims were in condition for allowance in the instant application, and the allowance was mailed on 4/7/2009. The 11/005,445 application had an RCE filed in it on 7/2/2009, and also has a terminal disclaimer filed therein over the instant '907 application.

As such, based on the fact that the only rejection in the 1/28/08 Office Action was a provisional double patenting rejection over the later filed 11/005,445 application, the examiner believes the recorded terminal disclaimer is no longer applicable to the one or more claims of the 11/005,445 application and should be vacated.

August 26, 2009

/Traviss C McIntosh III/  
Primary Examiner, Art Unit 1623